

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
HOWARD BROWN
d.b.a. H. BROWN TIRE &
RETREADING COMPANY,

Appellant,

v.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

Respondent.

PCHB No. 848

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

THIS MATTER, the appeal of a \$100 civil penalty for a visual emission violation of respondent's Regulation I having come on regularly for formal hearing before Board members Chris Smith and Walt Woodward on the 5th day of September, 1975, at Seattle, Washington and appellant Howard Brown appearing pro se and respondent Puget Sound Air Pollution Control Agency appearing through its attorney, Keith D. McGoffin, and the Board having considered the sworn testimony, the exhibits, records and files herein and having entered on the 18th day of September, 1975, its proposed

1 Findings of Fact, Conclusions of Law and Order, and the Board having
2 served said proposed Findings, Conclusions and Order upon all parties
3 herein by certified mail, return receipt requested and twenty days having
4 elapsed from said service; and

5 The Board having received exceptions to said proposed Findings,
6 Conclusions and Order from appellant and having considered and denied same;
7 now therefore,

8 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed
9 Findings of Fact, Conclusions of Law and Order dated the 18th day
10 of September, 1975, and incorporated by this reference herein and
11 attached hereto as Exhibit A, are adopted and hereby entered as the
12 Board's Final Findings of Fact, Conclusions of Law and Order herein.

13 DATED this 7th day of November, 1975.

14 POLLUTION CONTROL HEARINGS BOARD

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16 CHRIS SMITH, Chairman

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18 WALT WOODWARD, Member

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

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HOWARD BROWN d.b.a. H. BROWN
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Appellant,

v.

PUGET SOUND AIR POLLUTION
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PCHB No. 848

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

This matter, the appeal of a \$100 civil penalty for an alleged visual emission violation of respondent's Regulation I, came before the Pollution Control Hearings Board (Chris Smith, presiding officer, and Walt Woodward) at a formal hearing in the Seattle facility of the State Board of Industrial Insurance Appeals on September 5, 1975.

Appellant was represented by its owner, Howard Brown. Respondent appeared through Keith D. McGoffin. Jennifer Rowland, Olympia court reporter, recorded the proceedings.

Witnesses were sworn and testified. Exhibits were admitted.

EXHIBIT A

From testimony heard and exhibits examined, the Pollution Control Hearings Board makes these

FINDINGS OF FACT

I.

Respondent, pursuant to Section 5, chapter 69, Laws of 1974, 3d Ex. Sess., has filed with this Board a certified copy of its Regulation I containing respondent's regulations and amendments thereto.

II.

Section 9.03(a)(2) makes it unlawful to cause or allow the emission for more than three minutes in any one hour of an air contaminant of opacity greater than 40 percent as specified in Section 9.03(a)(1) (Ringelmann Chart No. 2). Section 3.29 authorizes respondent to levy a civil penalty of not more than \$250 for any violation of Regulation I.

III.

On March 28, 1975, an inspector on respondent's staff saw blue smoke ranging in opacity from 80 to 100 percent emerging for seven minutes, during an eight-minute observation, from the cyclone stack of a tire buffing machine in appellant's place of business at 205 Cross Street, Auburn, King County.

IV.

In connection therewith, respondent served on appellant Notice of Violation No. 11001, citing Section 9.03 of respondent's Regulation I, and Notice of Civil Penalty No. 2013 in the sum of \$100, which is the subject of this appeal.

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

V.

Subsequent to the incident described in Finding of Fact III, appellant has ordered and made improvements to the tire buffing device which he believes will minimize emissions. Appellant either has spent or will spend in excess of \$200 for these improvements.

VI.

Any Conclusion of Law hereinafter stated which is deemed to be a Finding of Fact is adopted herewith as same.

From these facts, the Pollution Control Hearings Board comes to these

CONCLUSIONS OF LAW

I.

Appellant was in violation of respondent's Regulation I as cited in Notice of Violation No. 11001.

II.

While Notice of Civil Penalty No. 2013, being two-fifths of the maximum allowable amount, is reasonable, further leniency should be shown in view of this Board's consistent policy to invoke penalty allowances if an appellant makes a post-citation effort to prevent further violations. The evidence here is that appellant has on order, at a cost twice that of the instant penalty, a device which he believes will avoid future violations.

III.

Any Finding of Fact herein which is deemed to be a Conclusion of Law is adopted herewith as same.

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 Therefore, the Pollution Control Hearings Board issues this

2 ORDER

3 The appeal is denied, Notice of Civil Penalty No. 2013 is
4 sustained in the sum of \$100, but immediate payment of only
5 \$25 is directed; the balance of \$75 is suspended pending no similar
6 violation for six months from the date this order becomes final.

7 DONE at Lacey, Washington this 18th day of September, 1975.

8 POLLUTION CONTROL HEARINGS BOARD

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10 CHRIS SMITH, Chairman

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13 WALT WOODWARD, Member

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27 FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER